

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISRTICT OF NEW MEXICO**

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FEB 20 2015 *pk*

MATTHEW J. DYKMAN
CLERK

JACOB GONZALES

Plaintiff,

VS.

CIVIL NO.

15 CV 152 MV/KK

NEW MEXICO CORRECTIONS DEPARTMENT,

GREGG MERCANTEL, SECRETARY OF CORRECTIONS

JERRY ROARK, DIRECTOR OF ADULT PRISION

SUSANNA MARTINEZ, STATE OF NEW MEXICO GOVENOR

JEFFERY WRIGLEY, WARDEN

JOHN BEAIRD, DEPUTY WARDEN

Sued in their individual and professional capacities; Defendants

JURY TRIAL DEMANDED

VERIFIED COMPLAINT FOR VIOLATIONS OF STATE AND FEDERAL

CONSTITUTIONAL RIGHTS IN REGARDS TO INSTITUTIONS

POLICY'S AND REGULATIONS

INTRODUCTION

THIS IS A CIVIL RIGHTS ACTION FILED BY JACOB GONZALES, A STATE PRISONER CURRENTLY HOUSED AT LEA COUNTY CORRECTIONAL FACILITY (LCCF). FOR DAMEGES AND INJUNCTIVE RELIEF UNDER 42.U.S.C.§1983, ALLEGING ARE CONSTITUTIONAL RIGHTS, DUE PROCESS VIOLATIONS AND MY FIRST AMENDMENT RIGHTS VIOLATION/ FOURTEENTH AMENDMENT RIGHT CONCERNING OUR RIGHT TO FREEDOM OF EXPRESSION AS A RESULT OF PRISION OFFICIALS' NEGLIGENCE IN ADEQUATE PERFORMANCE OF DUTIES.

II. JURISDICTION

(1.) THE COURT HAS JURISDICTION OVER THE PLAINTIFF'S CLAIMS OF FERDERAL CONSTITUTIONAL RIGHTS PURSANT TO 28.U.S.C.§1343(3),42.U.S.C.§1983.

III. PARTIES

- (2.) THE PLAINTIFF, JACOB GONZALES, IS A CITIZEN OF NEW MEXICO WHO WAS INCARCERATED IN THE PENITENTIARY OF NEW MEXICO HERE AT (LCCF) LEA COUNTY CORRECTION FACILITY DURING THE EVENTS DESCRIBED IN THIS COMPLAINT.
- (3.) DEFENDANTS GREGG MERCATEL THE SECRETARY OF CORRECTIONS, AND JERRY ROARK THE DIRECTOR OF ADULT PRISONS. THEY ARE BEING SUED IN THEIR OWN CAPACITY.
- (4.) DEFENDANTS JEFFERY WRIGLEY WARDEN AND JOHN BEAIRD DEPUTY WARDEN THEY ARE BEING SUED IN THEIR INDIVIDUAL CAPACITY.
- (5.) DEFENDANT SUSANNA MARTINEZ NEW MEXICO STATE GOVERNOR. SHE IS BEING SUED IN HER INDIVIDUAL CAPACITY.
- (6.) ALL THE DEFENDANTS HAVE ACTED, AND CONTINUE TO ACT, UNDER COLOR OF STATE LAW AT ALL TIMES RELEVANT TO THIS COMPLAINT.

IV. FACTS

THE FACTS ARE THAT GREGG MERCATEL THE SECRETARY OF CORRECTIONS, JERRY ROARK THE DIRECTOR OF ADULT PRISONS, SUSANNA MARTINEZ THE NEW MEXICO STATE GOVERNOR, JEFFERY WRIGLEY WARDEN, JOHN BEAIRD DEPUTY WARDEN HAVE BEEN CREATING OR ALLOWING AN UNCONSTITUTIONAL POLICY OR CUSTOM. A SUPERVISOR MAY BE FOUND TO BE PERSONALLY INVOLVED IN A VIOLATION OF OUR RIGHTS IF HE ALLOWS AN UNCONSTITUTIONAL POLICY TO CONTINUE. THE POLICY DOESN'T EVEN NEED TO BE WRITTEN. WHICH THEY KEEP ON VIOLATING OUR FIRST AMENDMENT RIGHT OF FREEDOM OF EXPRESSION AND FREEDOM OF SPEECH BY DEPRIVING US OF OUR RIGHT TO BE ABLE TO ORDER UNEDITED MUSIC, BY NOT BEING ALLOWED TO RECEIVE PICTURES OF OUR GIRLFRIENDS OR WIVES IN THEIR LINGERIE ALSO NOT BEING ALLOWED TO ORDER MAGAZINES LIKE CURVES, SHOW, MAXIM. THEN WHEN IT COMES TO (NMCD) POLICYS STANDARD OF STRUCTURE THEY ARE TOO VAGUE AND LACK FIRMNESS, DIRECT FORMALITY'S WHEN IT COMES TO TIME LIMITS.

(C) MUNICIPAL OR LOCAL GOVERNMENT LIABILITY

A MUNICIPALITY OR LOCAL GOVERNMENT- SUCH AS A COUNTY, CITY, OR TOWN CAN BE HELD LIABLE UNDER SECTION 1983 IF YOU CAN SHOW THAT THE VIOLATION OF YOUR CONSTITUTIONAL RIGHTS WAS EITHER (1) CAUSED BY A POLICY OR CUSTOM OF MUNICIPALITY.

(i) "DIRECT" MUNICIPAL LIABILITY

IN ORDER TO HOLD A MUNICIPALITY DIRECTLY LIABLE FOR A VIOLATION OF YOUR RIGHTS YOU MUST MEET THE REGULAR REQUIREMENTS FOR A SECTION 1983 CLAIM AND ALSO SHOW THE FOLLOWING: (1) A POLICY OR CUSTOM OF THE MUNICIPALITY CAUSED YOUR RIGHTS TO BE VIOLATED; AND (2) THE POLICY WAS CREATED BY SOMEONE WHO IS A FINAL POLICY MAKER FOR THE MUNICIPALITY ("FOR A POLICY OR CUSTOM TO BE CONSIDERED THE DIRECT CAUSE OF A VIOLATION OF YOUR RIGHTS, IT MUST BE UNCONSTITUTIONAL ON ITS FACE" "A POLICY OR CUSTOM ITSELF IS "UNCONSTITUTIONAL ON ITS FACE" IF THE POLICY OR CUSTOM ITSELF CAUSES YOUR RIGHTS TO BE VIOLATED.")

- (1) FOR INSTANCE WHEN IT COMES TO GREGG MERCATEL THE SECRETARY OF CORRECTIONS, JERRY ROARK THE DIRECTOR OF ADULT PRISONS, THE STATE OF NEW MEXICO GOVERNOR SUSANNA MARTINEZ WHO ARE PLACING THESE UNCONSTITUTIONAL POLICYS WHICH ARE VAGUE AND CONTRADICTORY TO MANDATORY BENEFIT THE CORRECTIONS DEPARTMENT, CORRECTIONS FACILITY WHICH IS ALWAYS UNFAIR, UNJUST, IS "UNCONSTITUTIONAL ON ITS FACE" BY THEM DEPRIVING US OF OUR FIRST

AMENDMENT RIGHT TO FREEDOM OF SPEECH, OUR RIGHT TO FREEDOM OF EXPRESSION, OUR FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION, RIGHT TO DUE PROCESS.

- (2) THE ABOVE DEFENDANTS UNCONSTITUTIONAL POLICYS ARE SO VAGUE THAT STIU HERE AT THIS FACILITY JUST LIKE EVERY OTHER FACILITY USE THESE UNCONSTITUTIONAL POLICIES TO MANIPULATE AND BURN US ON OUR VISITS BY USING THE VAGUE AND CONTRADICTIONARY POLICY TO SUSPEND OUR VISITS WITHOUT PROOF OF GUILT.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

- (1) THE PLAINTIFF I HAVE FILED ALL INFORMAL COMPLAINTS AND GRIEVANCES PERTAINING TO ALL THE ALLEGED CLAIMS CONCERNING ALL ADMINISTRATIVE REMEDIES WITH RESPECTS TO ALL CLAIMS AND ALL DEFENDANTS.
- (2) NO PREVIOUS LAWSUITS PERTAINING TO ANY OF THE ALLEGED CLAIMS HERE IN HAVE BEEN FILED AT THIS TIME.

VI. CASE OF ACTION

- (1) DEFENDANT SUSANNA MARTINEZ – NEW MEXICO STATE GOVENOR IS BIAS TOWARDS ANY AND EVERY PERSON OR PERSONS WHO ARE LABLED AS A CRIMINAL OR GANG MEMBER AND WHO IS TRYING TO INFLUENCE THE DEPARTMENT OF CORRECTIONS INTO TRYING TO TAKE EVERYTHING AWAY FROM US, WITH OUT ACTING IN THE COLOR OF LAW.
- (2) THE FAILURE OF DEFENDANTS GREGG MERCANTEL- THE SECRETARY OF CORRECTIONS , JERRY ROARK- THE DIRECTOR OF ADULT PRISIONS, SUSANNA MARTINEZ- NEW MEXICO STATE GOVENOR, TO PERFORM THEIR PERSCRIBED JOB DUITIES IN PREVENTING ANY WRITTEN POLICYS, CUSTOMS OR REGULATIONS, AND ANY UNWRITTEN PROCEDURESWHICH VIOLATES OUR CONSTITUTIONAL RIGHTS FROM DEPRIVING, OR HINDERING PLAINTIFF, PLAINTIFF'S OF ANY RIGHTS. BY DEFENDANTS DOING SO THE PLAINTIFF IS BEING DENIED MY RIGHT TO DUE PROCESS OF LAW PROTECTED BY THE FIFTH AND FOURTEENTH AMENDMENT RIGHT TO THE CONSTITUTION OF THE UNITED STATES WHERE A LIBERTY INTEREST IS CONCERNED.
- (3) THE ABOVE DEFENDANTS FAILURE INTO NOT CORRECTING THE CONSTITUTIONAL VIOLATIONS IS CONTRIBUTING TO A MISLEADING AND CORRUPT SYSTEM CONCERNING THE FOUNDATION OF REHABILITATION AND REINTERING BACK INTO SOCIETY WHICH THE PRISON WAS BASED ON. BY THE DEFENDANTS DEPRIVING US OF THESE THINGS IS NOT HELPING US PREPARE OUR SELVES TO REINTERING BACK INTO SOCIETY, OR HELPING WITH OUR REHABILITATION CAUSE ALL THE THINGS THEY ARE DEPRIVING US OF IN HERE ARE APART OF DAILY LIFE OUT IN THE FREE WORLD SO IF WE CAN'T FACE THE THINGS IN HERE TO PREPARE OUR SELVES WHEN WE GET OUT WHAT GOOD IS IT.
- (4) THE FAILURE OF THE ABOVE KNOWN DEFENDANTS MERCANTEL, ROARK, MS. MARTINEZ, WRIGLEY, BEAIRD, TO PROCESS THE APPROPRIATE PROCEDURES TO CORRECT THESE CONSTITUTIONAL RIGHTS VIOLATION IS SHOWING THAT THEY LACK ANY RESPECT TOWARDS THE LEGISLATION OR THE CONSTITUTION, AS WELL AS A PERSON IN GENERAL, WHICH CONSISTS OF THEM CONTRIBUTING TO AND

THE PROXIMATELY CAUSING THE ABOVE DESCRIBED VIOLATIONS OF THE PLAINTIFF'S FIRST, FIFTH AND FOURTEENTH AMENDMENT RIGHTS.

- (5) AS THE KNOWLEDGE AS AN INMATE AND THE PLAINTIFF OFF HAND I KNOW THAT DO TO THE LACK OF KNOWLEDGE FROM THE ABOVE DEFENDANT'S FAILURE IN THE WAY THEY APPLY THE POLICYS AND PROCEDURES WHICH ARE LACKING A DEFINITE DECISION, STRUCTURE IN TERMS TO A FIRM DIRECTNESS INSTEAD OF THE ALLOWING THEIR RULES AND REGULATIONS TO CONTRADICT THEMSELVES TO ONLY BENEFIT THE SYSTEM, ITS OWN DISCRETION. THIS IS UNFAIR CAUSE THEY ARE MAKING THE POLICYS AND PROCEDURES TO WHERE THEY APPLY AS A ONE WAY BASE TO WHERE IT ONLY APPLY'S TO US AS A INMATE AND NOT THEM CAUSE THEY ARE STAFF.
- (6) BY THE FAILURE OF THE ABOVE KNOWN DEFENDANT'S LACK OF CORRECTING THESE VIOLATIONS IS MAKING A STATEMENT SHOWING THAT LEGISTRATION AND THE CONSTITUTION DOESN'T APPLY TO THEM. THE PRISON SYSTEM WAS BASED ON TRYING ITS BEST TO REHABILITATE A PRISONER SO THAT THE PRISONER CAN BE RELEASED BACK INTO THE SOCIETY AS A WHOLE AND HOPEFULLY NOT RETURN BACK TO PRISON.
- (7) DO TO THE LACK OF UNDERSTANDING OF THE ABOVE DEFENDANT'S WHEN IT COMES TO THEM KNOWINGLY VIOLATING OUR CONSTITUTIONAL RIGHTS BY DEPRIVING US OF THE RIGHT TO ORDER UNEDITED MUSIC, US NOT BEING ALLOWED TO RECEIVE PICTURES OF OUR GIRLFRIENDS OR OUR WIVES IN LINGERIE OR BIKINI IS NOT ONLY DEPRIVING US OF OUR CONSTITUTIONAL RIGHTS, BUT ITS LIKE THEY'RE DEPRIVING US OF OUR HUMANITY, OUR DIGNITY AS WELL SHOULD BE PART OF OUR REHABILITATION, RELEASEMENT BACK INTO SOCIETY CAUSE THESE THINGS ARE A PART OF DAILY LIFE OUT THERE IN THE FREE WORLD.

VII. RELIEF REQUESTED

WHEREFORE, I THE PLAINTIFF REQUESTS THAT THE COURT'S GRANT THE FOLLOWING RELEIF!

A. ISSUE A DECLARATORY JUDGEMENT STATING THAT:

- (1) THE FAILURE OF THE DEFENDANTS MERCANTEL, ROARK, MARTINEZ, WRIGLEY, BEAIRD, TO ADEQUATELY PERFORM THEIR JOB DUTIES IN A PROFESSIONALY MANNERED WAY WHICH DOESN'T CAUSE FOR CONTRIBUTE TO OUR FIRST, FIFTH, FOURTEENTH CONSTITUTIONAL AMENDMENT RIGHTS VIOLATION AGAINST PLAINTIFF WHERE A LIBERTY INTEREST IS AT ISSUE.
- (2) THE FAILURE OF DEFENDANTS LISTED ABOVE ADEQUATELY ADJUST THE POLICY'S AND PROCEDURES TO WHERE THEY ARE NOT VAGUE OR INDISCRET IN TERMS TO BENEFITS THE DEPARTMENT OF CORRECTIONS PERSONEL ONLY, BUT MAKE IT TO WHERE THE POLICY'S, PROCEDURES THAT ARE AFIRM AND DIRECT STANDARD.
- (3) THE FAILURE OF ALL THE DEFENDANT'S LISTED ABOVE TO ADEQUATELY CORRECT THE VIOLATIONS OF OUR CONSTITUTIONALRIGHTS WITH IMPLACING STANDARD POLICY'S AND PROCEDURES WHICH DON'T OR ARE NOT IN VIOLATION WITH OUR FIRST, FIFTH, FOURTEENTH AMENDMENT RIGHTS, A MEMO STATING THAT WHAT WE ARE ALLOWED TO ORDER AT ONE FACILITY WE ARE ALLOWED TO HAVE AT ANY

AND EVERY FACILITY WE GO TO EVEN AT A LEVEL 4 THRU 6 BUT JUST BE PLACED IN A STORAGE PLACE UNTIL WE WORK OUR WAY BACK TO A LEVEL 3 FACILITY ONCE AGAIN.

- (A) ISSUE AN INJUNCTION ORDERING THE SECRETARY OF CORRECTIONS MERCATEL, THE DIRECTOR OF ADULT PRISONS ROARK, THE NEW MEXICO STATE GOVERNOR MARTINEZ TO: (1) FORMALLY CORRECT ALL POLICY'S AND PRODUCERS, ISSUE NEW POLICYS AND PRODUCERS CONCERNING THE WAY THE MAIL IS PROCESSED, THE WAY THEY ARE TAXING US ON OUR COMMISARY, AND ON LOWERING THE PRICES CONCERNING MUSIC PURCHASES, MAKE IT TO WHERE THERE ARE DIRECT PUNISHMENTS INSTEAD OF THEM BEING SO VAGUE AND MUNIPULATIVE TO BENEFIT THE CORRECTIONS DEPARTMENT WHICH IS UNFAIR, UNJUSTLY TOWARDS US AS INMATES, ADD DIRECT TIME LIMITS TO ALL GUIDELINES PERTAINING POLICYS, PRODECURES.
- (B) ISSUE AN INJUNCTION ORDERING NMCD TO: (1) PROMULGATE AND MAKE PUBLIC, OFFICIAL POLICIES AND PROCEDURES CONCERNING ALL POLICIES, PRODUCERS ALSO CONCERNING DISCIPLINARY PROCESS WHICH ARE OUTLING THE STAFF AND CONTRACTED EMPLOYEES PERTAINING TO BUT NOT, INCLUDING, NOT LIMITING TO THE TYPES OF OFFENSE AGAINST INMATES SUCH AS THE DEFENDANTS NOT PERFORMING THEIR JOB DUTIES OR PERFORMING THEM INCORRECTLY, NOT COMPLYING OR WITH MISINTERPRETING POLICY'S, OR CREATING WRITTEN OR UNWRITTEN FACILITY RULES THAT ARE MORE RESTRICTIVE THAN (NMCD) POLICYS WITHOUT USING THE CORRECT PROCEDURES OF APPROVAL AS WELL AS THE OFFENSE THAT HAVE NO CONSTITUTIONAL RELEVANCY, AND THE POSSIBLE PUNISHMENTS ASSOCIATED WITH SAID OFFENSES.
- (2) PROPOSE TO LEGISLATION TO SEE THAT THERE CAN BE APPROVED A LAW THAT HOLDS NMCD STAFF AND CONTRACTED EMPLOYEES ACCOUNTABLE FOR THEIR ACTIONS OR LACK OF ACTIONS.
- (A) AWARD 100,000 COMPENSATORY DAMAGES JOINTLY OR SEVERALLY AGAINST DEFENDANTS MERCATEL, ROARK, MS. MARTINEZ, WRIGLEY, BEAIRD. FOR PHYSICAL, MENTAL AND EMOTIONAL DISTRESS, INJURYS SUSTAINED BY DEFENDANTS AS A RESULT OF ALL THE FOR SAID CONSTITUTIONAL VIOLATIONS, THAT THERE BE NO RETALATORY ACTS AGAINST ME IN ANY WAY.
- (B) AWARD PUNITIVE DAMAGES AGAINST EACH DEFENDANTS MERCATEL, ROARK, MARTINEZ, WRIGLEY, AND BEAIRD IN THE AMOUNT OF \$20,000.
- (C) GRANT SUCH OTHER RELIEF AS IT MAY APPEAR THAT THE PLAINTIFF IS INTITLED TO.

DECLARATION UNDER PENALTY OF PERJURY

I THE PLAINTIFF JACOB GONZALES DECLARES UNDED PENALTY OF PERJURY THAT I THE PLAINTIFF IN THE ABOVE ACTION IN THE ABOVE COMPLAINT AND THAT THE INFORMATION CONTAINED HERE IN IS TRUE AND CORRECT IN TERMS THAT I AM NOT A PROFESSIONAL ATTORNEY DO TO 28.U.S.C.§1746,18.U.S.C.§1621, EXECUTED AT LEA COUNTY CORRECTIONS FACILITY ON 2 17 15 THAT THE ABOVE PLAINTIFF MAILED OUT A COPY TO THE DEFENDANTS AND THE ATTORNEY GENERALS OFFICE, THE ORIGINAL TO THE UNITED STATE DISTRICT COURT.

(4)  #61401
JACOB GONZALES #61401

Jacobs Longwell #51401
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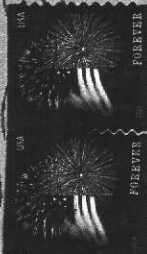
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MATTHEW J. DYKMAN
CLERK

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